

E-Filed 7/16/2009

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JAMES ALAN BUSH,

Plaintiff,

v.

SUNNYVALE DEPARTMENT OF PUBLIC
SAFETY, et al.,

Defendants.

Case Number C 08-1354 JF (RS)

ORDER¹ (1) RE FILING FEE AND (2)
GRANTING MOTION FOR
RECONSIDERATION

[re: doc. no. 118]

On June 27, 2008, the Court stayed the instant case pending Plaintiff's appeal of the denial of his application to proceed *in forma pauperis*. Plaintiff also was granted leave to amend his complaint. On April 14, 2009, the Court denied Plaintiff's renewed request to proceed *in forma pauperis* and instructed Plaintiff to pay the civil filing fee within thirty days. Plaintiff subsequently filed another notice of an appeal. On May 29, 2009, this Court found that Plaintiff's multiple requests to proceed *in forma pauperis* were frivolous or not made in good faith, thereby allowing Plaintiff to file a request to proceed in the Court of Appeals without paying the \$455.00 fee required for a civil appeal. *See* Fed. R. App. P. 24(a)(4)-(5).

¹ This disposition is not designated for publication in the official reports.

1 On June 16, 2009, Plaintiff submitted a letter to the Clerk of this Court requesting that
2 \$350.00 be withdrawn from his prisoner's trust account to pay the civil filing fee. The intent of
3 Plaintiff's request was unclear, and the Court construed the request as an indication that Plaintiff
4 had decided to proceed in this Court by paying the civil filing fee, thereby mooting his appeal.
5 See Order, June 22, 2009. Plaintiff then filed the instant motion for reconsideration, in which he
6 clarified that he intended to pursue an appeal of the denial of his application to proceed *in forma*
7 *pauperis*, but that he also wishes to submit a partial payment of the civil filing fee as required by
8 28 U.S.C. § 1915, which authorizes a district court to allow a civil case to proceed without the
9 prepayment of the filing fee but also requires that prisoners eventually pay the filing fee in full
10 through installment payments. See 28 U.S.C. § 1915(b). While Plaintiff currently is
11 incarcerated, he filed the instant action prior to his incarceration. The installment provisions of §
12 1915 do not apply to non-inmates. See *DeBlasio v. Gilmore*, 315 F.3d 396, 398 (2003).
13 Accordingly, if Plaintiff prevails on his appeal, this Court will not require the payment of the
14 civil filing fee. If the Ninth Circuit denies his appeal, Plaintiff shall have thirty (30) days from
15 the date of such denial to pay the civil filing fee of \$350.00.

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18 IT IS SO ORDERED.

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22 DATED: July 16, 2009

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JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

2 James Alan Bush
DWF967-08086698

3 701 S. Abel St.
4 Milpitas, CA 95035

5 James Alan Bush
DWF967-08086698
6 885 N. San Pedro Ave., 6-C
7 San Jose, CA 95110